

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

HARMONY FILMS LTD.,

Plaintiff,

v.

DOES 1 THROUGH 739,

Defendants

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Case No. 10-cv-02412-F

ADULT SOURCE MEDIA,

Plaintiff,

v.

DOES 1 THROUGH 247,

Defendants.

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Case No. 10-cv-2605-F

D&E MEDIA LLC,

Plaintiff,

v.

DOES 1 THROUGH 258,

Defendants.

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Case No. 11-cv-1-F

SERIOUS BIDNESS, LLC,

Plaintiff,

v.

DOES 1 THROUGH 109,

Defendants.

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Case No. 11-cv-2-F

STEVE HARDEMAN, LLC,

Plaintiff,

v.

DOES 1 THROUGH 168,

Defendants.

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Case No. 11-cv-56-F

FUNIMATION ENTERTAINMENT,

Plaintiff,

v.

DOES 1 THOUGH 1,337,

Defendants.

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Case No. 11-cv-147-F

NON-PARTY TIME WARNER CABLE INC.'S MOTION FOR CLARIFICATION

February 28, 2011

Respectfully submitted,

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**ATTORNEYS FOR NON-PARTY
TIME WARNER CABLE INC.**

MOTION FOR CLARIFICATION

The above-captioned cases are part of a series of essentially identical lawsuits filed in this judicial district, each alleging that large numbers of anonymous “John Doe” defendants violated plaintiffs’ copyrights by distributing files on the Internet using the “bit torrent” protocol. These cases also are identical to dozens of other cases filed around the country, each also presenting the same allegations. Movant Time Warner Cable Inc. (“TWC”), which operates as an Internet Service Provider under the name “Road Runner,” is not a party in any of these cases. TWC has filed motions to quash third party subpoenas in parallel copyright cases in other jurisdictions, because compliance with subpoenas in these massive cases would cause TWC to incur significant and undue burdens. TWC had intended to file similar motions in this jurisdiction.

Recently, this Court issued orders severing all John Doe defendants except for one in each case, and vacating its earlier orders authorizing discovery. The Court’s orders largely resolve TWC’s concerns, because a subpoena seeking information about one Doe defendant does not create nearly the burdens as subpoenas seeking information about dozens or hundreds of subscribers at a time.

However, there is an ambiguity in some of the Court’s orders, and that ambiguity has potentially significant ramifications. In most of the cases, the Court entered orders on February 10, 2011 that, in addition to severing all Does but one, also quashed all outstanding subpoenas, and ordered only the single Internet Service Provider affiliated with the remaining John Doe No. 1 to preserve that one defendant’s identifying information. *See Lucas Entertainment, Inc. v. Doe 1*, 3:10-cv-01407-F (N.D. Tex. filed Nov. 17, 2010); *Lucas Entertainment Inc v. Doe 1*, 3:10-cv-01537-F (N.D. Tex. filed Aug. 9, 2010); *VCX Ltd., Inc. v. Doe 1*, 3:10-cv-01702-F (N.D. Tex. filed Aug. 27, 2010); *LFP Internet Group, LLC v. Doe 1*, 3:10-cv-01863-F (N.D. Tex. filed Sept.

17, 2010); *LFP Internet Group LLC v. Doe 1*, 3:10-cv-02094-F (N.D. Tex. filed Oct. 15, 2010); *LFP Internet Group, LLC v. John Doe 1*, 3:10-cv-02095-F (N.D. Tex. filed Oct. 17, 2010); *LFP Internet Group LLC v. Does 1 - 1,106*, 3:10-cv-02096-F (N.D. Tex. filed Oct. 18, 2010); *LFP Internet Group LLC v. Doe 1*, 3:10-cv-02139-F (N.D. Tex. filed Oct. 22, 2010). However, in the cases identified in the caption to this motion, the Court entered orders on February 7, 2011 that severed all Does but one, but did not expressly quash the subpoenas served on ISPs, and appear to require *all* ISPs to preserve identifying information about *all* Doe defendants, even those who have been severed.

The distinction between the two sets of orders is very significant to TWC, because preserving identifying information about large numbers of subscribers is very costly and burdensome. In order to know which subscribers' information to preserve, TWC must undergo much of the arduous lookup processes that creates the burdens with which TWC has been concerned in these and other cases. As much as 85% of the burdens and costs of looking up and providing identifying information about subscribers are incurred at the front end of the process. Thus, an order requiring TWC to preserve data about hundreds of subscribers is nearly as burdensome as full compliance with a subpoena ultimately would be. Moreover, in several of the cases, TWC has not even received a subpoena, so these orders represent TWC's only connection to the cases.

TWC is not aware of any meaningful difference among the cases, and thus TWC speculates that the different data preservation orders may have been inadvertent. For this reason, rather than pursuing a protective order, TWC respectfully seeks clarification of the Court's orders, and requests that the Court enter orders in the above captioned cases clarifying that all subpoenas are quashed and that preservation of data is required only for Doe No. 1 in each case.

February 28, 2011

Respectfully submitted,

/s/ John T. Cox III

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**ATTORNEYS FOR NON-PARTY
TIME WARNER CABLE INC.**

CERTIFICATE OF SERVICE

I certify that I served true and correct copies of the foregoing document was served upon the following party via ECF notification on February 28, 2011:

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/s/ John T. Cox III

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